

D.R. No. 2008-14

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE DIRECTOR OF REPRESENTATION

In the Matter of

BOONTON BOARD OF EDUCATION,

Public Employer,

-and-

LOCAL 1158 IBEW,

Docket No. RO-2008-005

Petitioner.

-and-

BOONTON EDUCATION ASSOCIATION,

Intervenor.

SYNOPSIS

The Director of Representation dismisses a representation petition filed by Local 1158, IBEW. The Director finds that the petitioned-for unit is inappropriate because the titles and skills of the petitioned-for employees fit within the existing broad-based unit represented by the Boonton Education Association, which has expressed that it is willing to represent the petitioned-for titles if they are organizable.

D.R. No. 2008-14

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE DIRECTOR OF REPRESENTATION

In the Matter of

BOONTON BOARD OF EDUCATION,

Public Employer,

-and-

LOCAL 1158 IBEW,

Docket No. RO-2008-005

Petitioner.

-and-

BOONTON EDUCATION ASSOCIATION,

Intervenor.

Appearances:

For the Respondent,
Lindabury, McCormick, Estabrook & Cooper, attorneys
(Dennis McKeever, of counsel)

For the Petitioner,
Kroll Heineman & Giblin, attorneys
(Raymond G. Heineman, of counsel)

For the Intervenor,
Oxfeld Cohen, P.C., attorneys
(Sanford R. Oxfeld, of counsel)

DECISION

On August 30, 2007, Local 1158, IBEW (Local 1158) filed a representation petition for a certification by card check seeking to represent "all office clericals and the information technologist" employed by the Boonton Board of Education (Board).

On September 19, 2007, the Board provided an alphabetical

list of the employees described in the petition along with their job titles. On September 20, the Board sent a revised list. The titles are: payroll/negotiations coordinator, information technology coordinator, confidential business assistant, accounts payable/head bookkeeper, secretary to the director of curriculum/instruction, confidential administrative assistant to the superintendent of schools, computer technician, and confidential operations assistant.

The Board contends that all of the titles are confidential within the meaning of the Act because they are privy to information related to collective negotiations and administration, and have access to financial cost estimates and Board negotiations strategies.

The Boonton Education Association (Association) is the exclusive majority representative of a unit of professionals, custodians, secretaries, bus drivers, and teacher assistants. Excluded from the unit are the Superintendent, assistant superintendents, business administrators/board secretaries, principals, vice principals, curriculum coordinator, child study team coordinator, assistant principals, department supervisors, food service director, school physicians, confidential secretaries, treasurer, attorneys, maintenance supervisor, athletic director, substitutes (per diem), payroll/negotiations coordinator, school district accountant and professional

consultants. The collective negotiations agreement between the Board and the Association extends from July 1, 2006 through June 30, 2008.

The Association has intervened on the petition. N.J.A.C. 19:11-2.7(b)(2). The Board and the Association advise that the employees in the petitioned-for titles work in the Board's central office. They assert that the titles were excluded from the Association's unit because they were confidential within the meaning of the Act. The Association contends that if the petitioned-for titles are organizable, they belong in its unit.

Local 1158 disputes that the titles for which it has petitioned are confidential. It claims that they are residual, and some were specifically excluded from the Association's unit in the recognition clause of the collective agreement signed by the Board and the Association. Local 1158 also contends that the petitioning employees vainly sought representation by the Association several times over the years. It also argues that the petitioning employees do not share a community of interest with the Association's unit. It characterized the Association's unit as ". . . comprised almost exclusively of teachers and administrators," and the petitioned-for unit as comprised of "clerical staff and other technical employees."

On May 12, I issued a letter tentatively dismissing the petition. Local 1158 filed a response reiterating its earlier

arguments, emphasizing that the petitioned-for titles are organizable residual titles because they were specifically excluded from the unit in the recognition clause of the collective agreement signed by the Board and the Association.

Analysis

We must determine if the petitioned-for unit of "all office clericals and the information technologist" working in the Board's central office is appropriate. An investigation into confidential status of the titles is unnecessary if the petitioned-for unit is inappropriate.

The Commission is charged with determining in each instance which unit is appropriate. N.J.S.A. 34:13A-6. Where more than one unit is potentially appropriate, the Commission must determine which unit configuration is most appropriate. State v. Prof. Assn. of N.J. Dept. of Ed., 64 N.J. 231 (1974). N.J.S.A. 34:13A-5.3 requires that negotiations units be defined "with due regard for the community of interest among the employees concerned." However, in making unit determinations, we must consider the general statutory intent of promoting stable and harmonious employer - employee relations. The desires of the employees and of the parties, while relevant, are not paramount. We consider the totality of circumstances of the particular case, including the history of the negotiations unit and the extent of organization of the employer's employees. Teaneck Tp., P.E.R.C.

No. 88-20, 13 NJPER 483 (¶18270 1987); Passaic County Board of Freeholders, P.E.R.C. No. 87-141, 13 NJPER 483 (¶18179 1987); Englewood Bd. of Ed., P.E.R.C. No. 82-25, 7 NJPER 516 (¶12229 1981).

The Commission has favored structuring negotiations units along broad-based, functional lines and has been reluctant to find appropriate units which are structured along occupational or departmental lines. See Bordentown Reg. Bd. of Ed., P.E.R.C. No. 84-126, 10 NJPER 276 (¶15136 1984), aff'd App. Div. Dkt. No. A-4503-83T6 (4/4/85); Piscataway Tp. Bd. of Ed., P.E.R.C. No. 88-124, 10 NJPER 272 (¶15134 1984); Ridgewood Bd. of Ed., P.E.R.C. No. 82-14, 7 NJPER 462 (¶12204 1981); Bergen Co. Bd. of Freeholders, P.E.R.C. No. 69 (1972); State of New Jersey, P.E.R.C. No. 68 (1972); South Plainfield Bd. of Ed., P.E.R.C. No. 46 (1970).

When asked to consider a residual group of employees, we have rejected units along single job categories where the petitioned-for units have a strong community of interest with an existing broad-based unit; where the incumbent representative was willing to represent the petitioned-for employees in a broad-based unit; where the positions were created after the formation of the broad-based unit, and where the employer did not waive its right to insist on broad-based units. See E. Windsor Tp., P.E.R.C. No. 97-68, 23 NJPER 51 (¶28035 1996), aff'g D.R. No.

97-2, 22 NJPER 348 (¶27180 1996); NJIT; Camden Bd. of Ed., P.E.R.C. No. 87-53, 12 NJPER 847 (¶17326 1986); Camden Bd. of Ed., E.D. No. 76-32, 2 NJPER 123 (1976).


The Association's unit includes virtually all eligible employees of the Board. The titles of the petitioned-for employees and their attendant clerical and technology support skills appropriately fit within the broad configuration of titles already included in the existing negotiations unit. For example, Local 1158 has petitioned for the title of "office clericals;" secretaries are already included in the Association's unit. Accordingly, I find that the petitioned-for employees have a strong community of interest in the existing broad-based unit. Although the employees in the petitioned-for unit all work at the Board's central office and not in the schools, I find that this distinction does not diminish the community of interest that is shared between the employees in the Association's unit and the petitioned-for group. Furthermore, the Association has expressed its willingness to represent the petitioned-for titles in its broad-based unit if they are organizable.

Based on the above, I find the petitioned-for unit inappropriate. Therefore, the petition is dismissed. The Association can reassess whether the petitioned-for titles are, in fact, confidential. If it concludes that any of them are not

confidential, it can seek to file a timely petition to accrete such titles into its overall unit.

The petition is dismissed.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Arnold H. Zudick

DATED: June 19, 2008
Trenton, New Jersey

A request for review of this decision by the Commission may be filed pursuant to N.J.A.C. 19:11-8.1. Any request for review must comply with the requirements contained in N.J.A.C. 19:11-8.3.

Any request for review is due by June 30, 2008.